

FILED  
Clerk  
District Court

FEB 14 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

ANGELO M. LABORCE,	)	Civil No. 05-0036
	)	
Plaintiff	)	
	)	
v.	)	ORDER DENYING
	)	DEFENDANT DARREL
S-WON, INC.; P&S, INC.;	)	M. QUITUGUA'S MOTION
YOUNG KYUN KIM;	)	TO DISMISS OR, IN THE
JOHN GERALD PANGELINAN;	)	ALTERNATIVE, FOR
DANIEL MUNA QUITUGUA;	)	SUMMARY JUDGMENT
DARRELL MUNA QUITUGUA;	)	
and, JOE CRISOSTOMO,	)	
	)	
Defendants	)	
_____	)	

THIS MATTER is before the court on the motion of pro se defendant Darrel Muna Quitugua's motion to dismiss the complaint against him or, in the alternative, for entry of summary judgment in his favor. By order dated January 26, 2006, the court indicated it would decide the motion without oral argument.

1 Defendant Darrel Quitugua's motion to dismiss or, in the alternative, for  
2 summary judgment is denied, for the following reasons.

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4 Federal Rule of Civil Procedure 8 requires only a "short and plain statement of  
5 the claim showing that the pleader is entitled to relief." The Rule contains "a  
6 powerful presumption against rejecting pleadings for failure to state a claim." Auster  
7 Oil & Gas, Inc. v. Stream, 764 F.2d 381, 386 (5th Cir. 1985). A motion to dismiss for  
8 failure to state a claim upon which relief can be granted will succeed only if from the  
9 complaint it appears beyond doubt that plaintiffs can prove *no* set of facts in support  
10 of their claim that would entitle them to relief. Morley v. Walker, 175 F.3d 756, 759  
11 (9th Cir. 1999) (emphasis added). All allegations of material fact are taken as true and  
12 construed in the light most favorable to the non-moving party. Enesco Corp. v.  
13 Price/Costco, Inc., 146 F.3d 1083, 1085 (9th Cir. 1998).

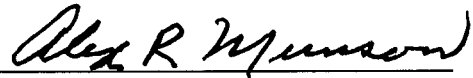
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17 Accepting the allegations of the complaint as true, the court finds that plaintiff  
18 has properly pleaded causes of action for assault and battery and intentional infliction  
19 of emotion distress against this defendant. *See*, for assault and battery, 6 N.Mar.I.  
20 Code § 1202(a), Restatement (Second) of Torts § 16, and 7 N.Mar.I. Code § 3401,  
21 and, for intentional infliction of emotional distress, Restatement (Second) of Torts §  
22 46, and 7 N.Mar.I. Code § 3401.  
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25 Defendant's incarceration, indigent status, and claim that he did not fire the  
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1 gun which allegedly injured plaintiff during the armed robbery are irrelevant to the  
2 issue before the court on this motion.

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4 IT IS SO ORDERED.

5 DATED this 14th day of February, 2006.  
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10 ALEX R. MUNSON

11 Judge  
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